United Nations A/71/229

General Assembly

Distr.: General
29 July 2016

Original: English

Seventy-first session
Item 66 (a) of the provisional agenda*
Rights of indigenous peoples

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Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, submitted in accordance with Human Rights Council resolution 30/4.

* A/71/150.

16-13163 (E) 170816

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Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz

Summary

The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Council resolutions 15/14 and 24/9. In the report, the Special Rapporteur provides a brief summary of her activities since her previous report to the Assembly, as well as a thematic analysis of conservation measures and their impact on indigenous peoples' rights.

Protected areas have the potential of safeguarding the biodiversity for the benefit of all humanity; however, these have also been associated with human rights violations against indigenous peoples in many parts of the world. The complex violations that have been faced by indigenous peoples in the wake of evermore expanding protected areas have been raised by respective special rapporteurs during numerous country visits and communications to governments.

The present report charts legal developments and commitments and measures taken made to advance a human rights-based paradigm in conservation, while also identifying key remaining challenges. The report concludes with recommendations on how conservation, in policy and practice, can be developed in a manner which respects indigenous peoples' rights and enhances sustainable conservation.

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I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Council resolutions 15/14 and 24/9. In the report, the Special Rapporteur provides a brief summary of her activities since her previous report to the Assembly (A/70/301) as well as a thematic analysis of conservation measures and their impact on indigenous peoples' rights.

II. Activities of the Special Rapporteur

A. Participation in conferences

2. As part of the fulfilment of her mandate, the Special Rapporteur participated in a number of international and national conferences and dialogues, including:

(a) The Paris Conference of Parties to the United Nations Framework Convention on Climate Change in December 2015. Together with the Office of the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur on human rights and the environment, the Special Rapporteur advocated for the inclusion of human rights in the Paris decisions. Language which recognizes the need to address human rights, including indigenous peoples' rights, in all climate change measure was included in the Paris Agreement;

(b) A symposium organized by the Canadian Feminist Alliance for International Action, the Canadian Journal of Women and the Law and the Native Women's Association of Canada in January 2016 on missing and murdered indigenous women to discuss the national inquiry launched by the Government in December 2015;

(c) The High-level Dialogue on the World Bank draft environmental and social standard on Indigenous Peoples in Addis Ababa in February 2016, which centred on the use of the term indigenous peoples and the requirement to obtain their free, prior and informed consent. The Special Rapporteur, together with the Chair of the United Nations Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, subsequently wrote a joint letter to the World Bank to express concerns regarding the weakening of the safeguards, with proposals for remedial language;

(d) A seminar on experiences in litigation of cases of violence against women and women's access to justice in Guatemala in February 2016, invited by Alianza Rompiendo el Silencio and Lawyers without Borders, Canada. The Special Rapporteur hailed the 26 February 2016 judgment in the *Sepur Zarco* case on sexual slavery of indigenous women by the Guatemalan military during the armed conflict as an important historical victory of justice for indigenous women and victims of sexual slavery worldwide;

(e) An international seminar on indigenous jurisdiction and access to justice in Bogotá in February 2016 by invitation of the Attorney General's Office. Her intervention underlined the need to increase dialogue and cooperation in the harmonization of indigenous jurisdiction and the ordinary justice system;

(f) A panel discussion organized by Columbia University in New York in May 2016 on how armed conflict and peace negotiations affect indigenous peoples;

(g) A meeting by invitation of the Nordic Trust Fund of the World Bank in June 2016. The Special Rapporteur discussed the importance of safeguarding indigenous peoples' rights in World Bank operations and programmes;

(h) Regional seminars co-organized by the Special Rapporteur and the International Work Group for Indigenous Affairs and the Asia Indigenous Peoples' Pact and Tebtebba on the impacts on investment treaties on the rights of indigenous peoples, in Lima for Latin America and in Bangkok for Asia, and a global seminar held in New York in May 2016, to obtain information for her second thematic report on this issue for the Human Rights Council in September 2016;

(i) The regular sessions of the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. The Special Rapporteur held meetings with members of these mechanisms on ways to maintain and increase the coordination among them. In parallel to the sessions, she also held meetings with several State delegations and indigenous organizations.

B. Country visits and communications

3. Since her last report to the General Assembly, the Special Rapporteur carried out three official country visits to Sápmi (Finland, Norway and Sweden) in August 2015, Honduras in November 2015 and Brazil in March 2016. The reports of these visits will be presented to the Human Rights Council in September 2016.

4. During the Special Rapporteur's visit to Sápmi, the Special Rapporteur highlighted her concerns on the land rights situation of the Sami people. She observed that the increased drive to mineral extraction and the development of renewable energy projects in Sápmi was one of the main threats against the realization of the rights of the Sami people.

5. In Honduras, the Special Rapporteur noted that a fundamental problem faced by indigenous peoples was the lack of full recognition, protection and enjoyment of their rights to ancestral lands and natural resources and impunity for the increasing violence against indigenous peoples. During the visit, the Special Rapporteur met with Berta Cáceres, an indigenous Lenca activist who was killed four months later (on 3 March 2016) because of her protests against the Agua Zarca dam project, even though she had been awarded precautionary protection measures from the Inter-American Commission on Human Rights. The Special Rapporteur will continue to monitor the investigations into Ms. Caceres' murder and urges the State to hold the perpetrators accountable and break the vicious cycle of impunity.

6. Regarding Brazil, the Special Rapporteur expressed concern about the fact that that, in the eight years following the visit of her predecessor, there had been a disturbing absence of progress in the resolution of long-standing issues of key concern to indigenous peoples. She noted the convergence of various disconcerting developments endangering the rights of indigenous peoples. The risk of ethnocidal effects in such contexts could not be overlooked nor underestimated. The Special Rapporteur deeply regrets that, since her visit, killings and violent evictions of the Kaiowa Guarani peoples in Mato Grosso, some of which she visited, continue to take place.

7. The Special Rapporteur has continued to send communications, primarily to Governments, on specific cases of violations of the rights of indigenous peoples brought to her attention and encourages Member States to respond to these communications and to engage in a dialogue with her to improve the situation of indigenous peoples.

III. Conservation and indigenous peoples' rights

8. The impact that conservation initiatives have on indigenous peoples has been a constant and recurring theme since the establishment of the mandate of the Special Rapporteur on the rights of indigenous peoples in 2001. The consequences indigenous peoples have faced in the wake of evermore expanding protected areas have been raised by respective special rapporteurs during numerous country visits and communications to governments.

9. The three Special Rapporteurs on the rights of indigenous peoples have, since the creation of the mandate, paid particular attention to the human rights violations that conservation measures have caused indigenous peoples worldwide, notably by the expropriation of land, forced displacement, denial of self-governance, lack of access to livelihoods and loss of culture and spiritual sites, non-recognition of their own authorities and denial of access to justice and reparation, including restitution and compensation.

10. The focus of the present report on terrestrial protected areas and, to a limited extent, on World Heritage sites, is not intended to diminish the onus on the key factors causing displacement of indigenous peoples from their lands and the overall violations of their rights to lands and territories by extractive industries, agribusiness expansion and mega infrastructure development. Previous special rapporteurs have written thematic reports on extractive industries and violations of the right to development of indigenous peoples.

11. While the conservation community is in the process of adopting conservation measures that respect the human rights of indigenous peoples, considerable implementation gaps remain and new threats to human rights-based conservation are emerging. The Special Rapporteur has therefore decided that it is a timely and important moment to explore this topic in further depth. The present report charts legal developments and commitments and measures taken made to advance a human rights-based paradigm in conservation, while also identifying certain key remaining challenges. The report concludes with recommendations on how conservation, in policy and practice, can be developed in a manner which respects indigenous peoples' rights and enhances sustainable conservation.

12. A protected area is a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.[1] Protected areas consist of many different conservation modalities, among them national parks and forests, wildlife refuges, marine areas, private and non-governmental organization (NGO)-governed preserves, indigenous peoples' protected areas, community lands and other areas where the protection of nature and the practice of sustainable livelihoods foster ecosystem integrity.

[1] See Convention on Biological Diversity, art. 2.

13. Protected areas have the potential of safeguarding biodiversity for the benefit of all humanity; however, these have also been associated with human rights violations against indigenous peoples in many parts of the world. For over a century, conservation was carried out with the aim of vacating protected areas of all human presence, leading to cultural destruction and large-scale displacements of indigenous peoples from their ancestral lands in the name of conservation. Past conservation measures caused complex and multiple violations of the collective and individual human rights of indigenous peoples.

14. The expanse of protected areas nearly doubled over a period two decades, from 8.7 million square kilometres in 1980 to 16.1 million square kilometres in 2000.[2] There is significant spatial overlap between the traditional lands of indigenous peoples and areas which retain the highest levels of high-biodiversity. Traditional indigenous territories encompass around 22 per cent of the world's land surface and they coincide with areas that hold 80 per cent of the planet's biodiversity.[3] It has been estimated that 50 per cent of protected areas worldwide has been established on lands traditionally occupied and used by indigenous peoples and that this proportion is highest in the Americas, where it may exceed 90 per cent in Central America. Bolivia, Brazil, Chile and Colombia, as well as Canada and the United States of America, all have a high percentage of protected areas on indigenous traditional territory. Overlap is also significant in Australia and New Zealand. Most of the protected areas in India, Nepal and the Philippines include the territories of indigenous peoples. Botswana, Cameroon, Kenya, Namibia, South Africa and the United Republic of Tanzania are among the African countries in which large parts of the protected areas are located on indigenous peoples' ancestral domains.[4]

15. Indigenous peoples retain strong spiritual links with the plants, trees and animals on their lands and protecting their lands is a sacred duty. Yet, indigenous peoples may not refer to themselves as conservationists and this has resulted in a considerable lack of acknowledgement within the conservation community of indigenous peoples' contribution to conservation.[5] There is increasing recognition that the ancestral lands of indigenous peoples contain the most intact ecosystems and provide the most effective and sustainable form of conservation.[6] Studies have demonstrated that the territories of indigenous peoples who have been given land rights have been significantly better conserved than the adjacent lands.[7] Yet, to date, the important role played by indigenous peoples as environmental guardians has still failed to gain due recognition. According to the United Nations Environment

[2] Jenny Springer and Fernanda Almeida, "Protected areas and land rights of indigenous peoples and local communities" (Washington, D.C., Rights and Resources Initiative, 2015).

[3] Claudia Sobrevila, "The role of indigenous peoples in biodiversity conservation: the natural but often forgotten partners" (Washington, D.C., World Bank, 2008).

[4] Stan Stevens, ed., *Indigenous Peoples, National Parks and Protected Areas: A New Paradigm Linking Conservation, Culture and Rights* (Tucson, Arizona, University of Arizona Press, 2014).

[5] Grazia Borrini-Feyerabend and Rosemary Hill, "Governance for the conservation of nature", in Graeme Worboys and others, eds., *Protected Area Governance and Management* (Canberra, Australia National University Press, 2015).

[6] Stevens, *Indigenous Peoples*; Aili Pyhälä, Ana Osuna Orozco and Simon Counsell, "Protected areas in the Congo Basin, failing both people and biodiversity?" (London, Rainforest Foundation United Kingdom, 2016).

[7] Sobrevila, "The role of indigenous peoples"; Pyhälä, Orozco and Counsell, "Protected areas in the Congo Basin".

Programme World Conservation Monitoring Centre, in 2014, less than 5 per cent of protected areas worldwide were governed by indigenous peoples and local communities.[8]

16. Conservation efforts traditionally were state-centric and based on expropriation of lands subsequently placed under government control. Indigenous peoples were displaced, denied self-governance, deprived of access to natural resources for their livelihood and their traditional and spiritual links to ancestral land were disrupted. Marginalized and impoverished indigenous peoples have continued to struggle for access to their territories and tenure rights, resulting in enduring friction and conflict.

17. From the conservation perspective, the loss of the guardianship of indigenous peoples and the placing of their lands under the control of government authorities who have often lacked the capacity and political will to protect the land effectively, has left such areas exposed to destructive settlement, extractive industries, illegal logging, agribusiness expansion and large-scale infrastructure development. Even where national policies and laws require strict protection for protected areas, in many countries State agencies have still authorized mining, oil and gas extraction, logging, dams and reservoirs, highways and other projects in direct conflict with conservation goals.[9]

18. Mobilization of indigenous peoples' movements has led to advances in international law recognizing their collective right to their traditional lands and growing awareness among conservationists of the important role indigenous peoples play in conserving biodiversity are factors which have led to relatively recent, yet significant, shifts towards greater recognition of indigenous peoples' rights in the context of conservation. Leading conservation organizations have adopted commitments and policies seeking to adopt a "new paradigm" of undertaking conservation, while respecting the rights of indigenous peoples. However, significant gaps remain between these policies and their effective implementation on the ground.

19. Furthermore, among the principal challenges that indigenous peoples continue to face globally are difficulties in gaining legal recognition of collective ownership over their ancestral lands, especially when these have already been declared protected territories. National legislation is often contradictory. Laws pertaining to conservation and forestry are commonly not harmonized with subsequent national legislation and international law asserting the rights of indigenous peoples and the authorities responsible for enforcement of the different laws frequently fail to coordinate.

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[8] United Nations Environment Programme, *Protected Planet Report 2014: Tracking Progress Towards Global Targets for Protected Areas* (Cambridge, United Kingdom of Great Britain and Northern Ireland, 2014).

[9] See A/HRC/4/32/Add.2 and A/HRC/33/42/Add.2; see also, Marcus Colchester, *Salvaging Nature: Indigenous Peoples, Protected Areas and Biodiversity Conservation*, United Nations Research Institute for Social Development Discussion Paper, No. 55 (Geneva, United Nations Research Institute for Social Development, 1994).

IV. Human rights legal standards and jurisprudence

20. The aim of the present section is to chart and affirm the existing legal obligations to guarantee indigenous peoples' rights in the context of conservation. The rights of indigenous peoples stem from various branches of international law and have developed through international human rights law, international labour law and international environment law. International and regional human right jurisprudence have further advanced the application of key indigenous peoples' rights in conservation. Taking stock of the standing in international law of indigenous peoples' rights in relation to conservation thus requires consideration of the interrelatedness of the different rights, notably self-determination, cultural and property rights, and appreciation of the complementarity of international human rights law and international environment law.

21. While human rights-based approaches to conservation have become widely accepted among conservation NGOs, their internal policy documents are at times elusive regarding the specific rights of indigenous peoples. This underlines the importance of reiterating the key applicable legal provisions.

A. The right to self-determination and land rights

22. Self-determination is a right in itself and is also a necessary pre-condition for the fulfilment of other human rights. The right is a fundamental principle in international law and has been interpreted in a variety of legal contexts. Self-determination is considered an overarching right to indigenous peoples because of its cross-cutting nature and because it affirms their right to freely pursue their economic, social and cultural development. It is crucial to the issue of land conservation efforts because of its links with land rights and the right to participate within processes and decisions affecting them, such as the establishment and management of protected areas. The right to self-determination is enshrined within both the International Covenant on Civil and Political Rights (1966, article 1) and the International Covenant on Economic, Social and Cultural Rights (1966, article 1) and is included in the United Nations Declaration on the Rights of Indigenous Peoples (2007, article 3). Human rights treaty bodies, notably the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, have all affirmed, in analogous terms, that States must recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and to participate in the management and conservation of the associated natural resources.[10] The Committee on Economic, Social and Cultural Rights and the Human Rights Committee have underlined the importance of the provision of land titles on the ancestral lands by linking the right to self-determination with cultural rights (article 27 of the International Covenant on Civil and Political Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights).[11] The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International

[10] See Committee on the Elimination of Racial Discrimination general recommendation No. 23; concluding observations for Sri Lanka, in A/56/18, para. 335; see also CERD/C/DEC/SUR/1; CCPR/C/KEN/CO/3; E/C.12/KHM/CO/1.

[11] See Ben Saul, *Indigenous Peoples and Human Rights: International and Regional Jurisprudence* (Portland, Oregon, Hart Publishing, 2016).

Labour Organization (ILO) enshrines land rights for indigenous peoples in articles 14 to 19). The United Nations Declaration on the Rights of Indigenous Peoples, which consolidates the rights of indigenous peoples already recognized in other human rights instruments and through the jurisprudence of the international human rights treaty bodies, affirms the right of indigenous peoples to own and control their lands (articles 25, 26 and 27).

B. Participation and free, prior and informed consent

23. Respect for the right to participate and to free, prior and informed consent are sine qua non elements of effective advancement of indigenous peoples' rights in practice. ILO Convention No. 169 sets out the duty of States to consult indigenous peoples through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly (article 6). Human rights treaty bodies have consistently affirmed the principle of free, prior and informed consent of indigenous peoples in matters relating to their rights and interests and specifically in relation to their ancestral lands[12] and conservation.[13]

24. The Declaration on the Rights of Indigenous Peoples makes specific reference to conservation in article 29, which states that indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources and that States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. The Declaration furthermore states that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (article 32).

C. Forced displacement and the right to reparation, including restitution

25. Article 12(1) of the International Covenant on Civil and Political Rights establishes the right to liberty of movement and freedom to choose one's residence. This provision includes protection against all forms of forced internal displacement.[14] Persons whose rights or freedoms under the Covenant are violated shall have an effective remedy, as set out in article 2(3). In relation to forced evictions, the Committee on Economic and Social and Cultural Rights has affirmed that States must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.[15] The Guiding

[12] Human Rights Committee, *Ángela Poma Poma v. Peru*, communication No. 1457/2006; Committee on the Elimination of Racial Discrimination, general recommendation No. 23.
[13] See E/C.12/TZA/CO/1-3; see also CCPR/C/KEN/CO/3.
[14] See CCPR/C/21/Rev.1/Add.9, para. 7.
[15] Committee on Economic, Social and Cultural Rights, general comment No. 7, para. 8.

Principles on Internal Displacement emphasize that States are under a particular obligation to protect against the displacement of indigenous peoples and other groups with a special dependency on and attachment to their lands (principle 9). Due to the special relationship that indigenous peoples have with their land and the profound impact forced displacement has on their survival, human rights treaty bodies have consistently expressed concerns over the forcible displacement of indigenous peoples and urged States to provide reparation, with emphasis on the obligation to provide restitution of their original lands.[16] Reparation measures should be provided in accordance with international standards and, where appropriate, should entail elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.[17]

26. ILO Convention No. 169 (article 16) and the Declaration on the Rights on Indigenous Peoples (article 10) stipulate that indigenous peoples shall not be forcibly removed from their lands unless they have provided their free, prior and informed consent. Should such violations have occurred, they have the right to fair reparation including restitution and compensation and, where possible, the option of returning to their lands. Article 28 of the Declaration furthermore stresses the right of indigenous peoples to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

D. Regional human rights systems

27. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, with particular reference to property rights (article 21) of the American Convention on Human Rights, have provided key jurisprudence on the rights of indigenous peoples to communal lands, including in the context of protected areas. The *Awas Tingni v. Nicaragua* case decided by the Inter-American Court of Human Rights in 2001 set an important precedent as it was the first binding judgment, confirming that indigenous communal land rights arise by virtue of traditional occupation despite the lack of official legal title.[18] The Court has furthermore held that indigenous peoples maintain their property rights even when they have been forced to leave or have otherwise lost possession of their traditional lands, including where their lands have been expropriated or transferred to third parties, unless this was done consensually and in good faith.[19]

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[16] See Committee on the Elimination of Racial Discrimination, general recommendation No. 23; see also CERD/C/BWA/CO/16 and CERD/C/NAM/CO/12, discussed in Fergus MacKay, "Addressing past wrongs: indigenous peoples and protected areas — the right to restitution of lands and resources", Forest Peoples Programme Occasional Paper, 2002.

[17] See General Assembly resolution 60/147, see also CCPR/C/21/Rev.1/Add. 13, 2004, para.16.

[18] Inter-American Court on Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001, ser. C, No. 79.

[19] Inter-American Court on Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005, ser. C, No. 125; *Sawhoyamaxa Indigenous Community v. Paraguay*. Judgment of 29 March 2006. Series C No. 146.

28. Of particular importance to the rights of indigenous peoples in the context of conservation is the judgment of the Court in the *Kaliña and Lokono Peoples v. Suriname case* in November 2015, relating to three nature reserves established on their ancestral territory which partly prevented their access.[20] The judgment ordered the State to implement a series of guarantees of non-repetition, including the legal recognition of territorial and other rights of all indigenous and tribal peoples in Suriname. The Court furthermore concluded that respect for the rights of indigenous peoples may have a positive impact on environmental conservation and therefore the rights of indigenous peoples and international environmental laws should be seen as complementary rather than exclusionary rights. In February 2015, the Special Rapporteur acted as an expert witness in the case and emphasized indigenous peoples' right to effective participation in conservation management and their right to restitution for lands incorporated into protected areas without their consent. She underlined three basic principles in relation to protected areas, as follows: first, that States must recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources; second, that decision-making in relation to all aspects of protected areas must take place with indigenous peoples' effective participation and consent where any restrictions on their rights may be proposed; and third, that indigenous peoples have a right to restitution and other forms of redress where their lands have been incorporated into protected areas without their consent.[21]

29. In the African human rights system, the African Commission on Human and People's Rights held in the case of *Endorois Welfare Council v. Kenya*[22] that the rights of the Endorois had been violated when they were denied access to their traditional lands after the lands were turned into a game reserve in 1973. The Commission found that the Kenyan State was obliged to recognize the communal land rights of the Endorois indigenous peoples and provide compensation and restitution by returning the lands or by providing alternative lands of equal extent and quality in agreement with the indigenous community. Importantly, the Commission found that, although their land had become a game reserve, the Endorois were its ancestral guardians and thus best equipped to maintain its delicate ecosystem and that their alienation from their land threatened their cultural survival and thus the encroachment was not proportionate to the public need.

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[20] Inter-American Court on Human Rights, *Kaliña and Lokono Peoples v. Suriname*, Judgment, 25 November 2015, ser. C, No. 309. The Court found Suriname responsible for violations of the right to recognition of juridical personality (article 3 of the American Convention on Human Rights); the right to collective property and political rights (articles 21 and 23 of the American Convention); and the right to judicial protection (article 25 of the American Convention).

[21] Expert testimony of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, before the Inter-American Court on Human Rights on the case of *Kaliña and Lokono Peoples v. Suriname*, on 3 February 2015, available from http://unsr.vtaulicorpuz.org/site/index.php/en/press-releases/58-unsrip-conservation-policies.

[22] African Commission on Human and People's Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, communication No. 276/2003, 25 November 2009. The Commission found violations of the right to property (article 14 of the African Charter on Human and People's Rights), the right as peoples to freely dispose of its wealth and natural resources (article 21 of the African Charter) and the right to development (article 22 of the African Charter).

E. Convention on Biological Diversity

30. The Convention on Biological Diversity was adopted in 1992 and, as at 5 July 2016, had gained the widespread support of 196 Parties.[23] The treaty refers to indigenous peoples' knowledge, innovations and practices for the conservation and customary use of biological diversity. Article 8 (j) of the Convention commits States parties to respect and maintain the knowledge, innovations and practices of indigenous and local communities which are relevant for conservation and sustainable use of biological diversity. The Convention, however, fails to contain explicit recognition of the human rights of indigenous peoples.

31. Protected areas are among the cross-cutting issues addressed under the Convention on Biological Diversity. In 2004, the seventh meeting of the Conference of the Parties to the Convention adopted a programme of work on protected areas. It states that the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous peoples consistent with national law and applicable international obligations. In the programme of work, parties are requested to ensure that any resettlement of indigenous communities as a consequence of the establishment or management of protected areas will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations.[24] In 2014, the Conference of the Parties adopted a decision which highlighted the requirement that protected areas and management regimes must be consensual and participatory if indigenous peoples' rights are to be respected. It also recognized the contribution of indigenous peoples' own conservation initiatives within their territories to the effective conservation of important biodiversity sites.[25]

32. In view of the targets set by the parties to the Convention to expand protected area coverage to at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas by 2020, the Special Rapporteur stresses that States and conservation organizations need to implement measures to recognize the rights of indigenous peoples as a matter of priority.[26]

V. Initial conservation practices and their consequences

33. Conservation protected areas were initially established through the expropriation of the lands and territories of indigenous peoples and local communities. Colonial and post-colonial administrations around the world claimed common land for the State, without regard for the existing rights of traditional ownership and use under customary tenure. Such expropriated land was then allocated to new owners for new uses, such as settlement, exploitation, and conservation. In establishing the first "modern" protected areas in 1872 (Yellowstone National Park), and in 1890 (Yosemite National Park), the Government of the United States of America violently expelled the Native

[23] The relevant provisions are articles 8(j), 10(c), 17.2 and 18.4.

[24] See UNEP/CBD/COP/DEC/VII/28.

[25] See UNEP/CBD/COP/DEC/XII/12.

[26] See the Strategic Plan for Biodiversity 2011-2020, Aichi Biodiversity Target 11.See UNEP/CBD/COP/10/INF/12/Rev.1.

Americans who lived in and depended on the natural resources in those areas. This approach was influenced both by the perception of parks as pristine "wildernesses," devoid of human occupation and use, and by the interests of lobbies wanting to develop parks for tourism. Native peoples were seen as incompatible with those interests.[27]

34. Such protected areas were based on the following assumptions: protected areas should be created and governed by States; the goal of protected areas should be strict nature preservation with emphasis on biodiversity conservation and protected area management required protected areas to be uninhabited and without human use of natural resources. In its worst forms, coercive force was considered legally and morally justified to remove resident peoples and protect biodiversity.[28]

35. The exclusionary "fortress" approach to protected-area management spread across North America, to Africa, Australia, New Zealand, the Russian Federation and to parts of Asia and Latin America. It remained the dominant model of protected-area management for more than a century and its State-centric legacy still has significant impact on today's conservation efforts. Although a full accounting will never be possible, owing to lack of accurate records, there is abundant evidence that large numbers of indigenous persons were dispossessed. Estimates of the number that may have been displaced worldwide run into the millions.[29]

36. From the perspective of indigenous peoples, the creation of protected areas was perceived as colonialist, as the consequences for indigenous peoples who experienced them spelled subjugation and the loss of lands, autonomy and self-governance, livelihood resources as well as the rupture of cultural and spiritual links. Protected areas under State control imposed new laws and forms of control by Government institutions. In this sense, protected areas were seen as a vehicle for coercive assimilation by indigenous peoples.[30] Many of the egregious human rights violations against indigenous peoples which took place in the name of conservation occurred before the 1980s, such as forced displacement following the creation of African game parks. In many countries the ongoing legacy of these violations continues to affect their exercise of their rights.

37. New approaches to conservation have emerged during the past two decades. Indigenous peoples mobilized and started to pursue their customary land rights with the support of evolving international legal standards in favour of their rights in the 1970s and 1980s. States, in turn, began reforms to legally recognize some of these rights, notably in South America. In Colombia (1991) and in Brazil (1998) indigenous land rights became constitutionally entrenched. Protected-areas policies were gradually changed towards recognition of indigenous land rights in Australia, Canada and New Zealand.[31] Since the mid-1990s, the Australian Government has

[27] Springer and Almeida, "Protected areas and land rights" (see footnote 2).
[28] Stevens, *Indigenous Peoples* (see footnote 4).
[29] Daniel Brockington and James Igoe, "Eviction for conservation: a global overview", *Conservation and Society*, vol. 4, No. 3 (2006); Mark Dowie, *Conservation Refugees: The Hundred-Year Conflict between Global Conservation and Native Peoples*, (Cambridge, Massachusetts, Massachusetts Institute of Technology Press, 2009).
[30] Stevens, *Indigenous Peoples*.
[31] Springer and Almeida, "Protected areas and land rights".

provided native title for indigenous peoples and supported co-management or their own management of protected areas.[32]

38. Protected areas in countries which have failed to undertake legal reforms and recognition of collective land rights for indigenous peoples have been marred by the highest and most persistent incidence of human rights violations against indigenous peoples. Furthermore, conservation efforts in countries where indigenous peoples remain marginalized have had the least sustainable and successful outcomes, which has prompted scrutiny of international conservation policies. Despite the fact that conservation is gradually embracing a human rights-based approach, significant challenges remain in ensuring its effective implementation.

VI. Paradigm shift since 2003

39. At the global level, protected-areas policy is shaped by the International Union for Conservation of Nature (IUCN). A membership organization, as at April 2016, IUCN had 1,351 members, including 89 States, 128 government agencies, 48 affiliates, 112 international NGOs, and 974 national NGOs. The latter two categories include 12 indigenous peoples' organizations. Every four years, IUCN members meet at the World Conservation Congress, where resolutions are adopted on conservation policies, and every ten years a World Parks Congress is held to deliberate on global commitments related to protected areas. World Parks Congresses constitute the most important global forums for setting international standards and guidelines for protected areas. At the Congress held in Durban in 2003, the world's leading conservationists announced a "new paradigm" for protected areas which would respect the rights of indigenous peoples and local communities. This important shift in the approach to conservation was adopted in response to growing public opinion that conventional protected area models wrongly excluded or marginalized indigenous peoples and local communities from their governance and management.[33]

40. To implement this new vision for conservation, the Durban Accord and Action Plan were adopted.[34] Noting that the costs of the global protected area system had been inequitably borne by local communities, the Action Plan explicitly recognized the rights of indigenous peoples in relation to natural resources and biodiversity conservation and that the protected area system must take full account of the rights, interests and aspirations of indigenous peoples, as well as of their desire to have their lands, territories and resources secured and protected for their own social and cultural survival.

41. The Accord called upon the Conference of the Parties to the Convention on Biological Diversity to ensure that indigenous peoples and local communities fully participate in the establishment and management of protected areas and that mechanisms be put in place to guarantee that they share the benefits from these

[32] Toni Bauman and Dermot Smyth, "Indigenous partnerships in protected area management in Australia: three case studies" (Australian Institute of Aboriginal and Torres Strait Islander Studies and The Australian Collaboration, 2007).

[33] Conservation Initiative on Human Rights, "Human rights in conservation: progress since Durban", White Paper, November 2014.

[34] See https://cmsdata.iucn.org/downloads/durbanaccorden.pdf and https://cmsdata.iucn.org/downloads/durbanactionen.pdf.

areas. Likewise, protected area authorities were encouraged to promote the conditions and ensure the means for the effective engagement of indigenous peoples, local communities and other local stakeholders in conservation. The Action Plan relating to the recognition and guaranteeing of indigenous peoples' rights set out three major targets:

- All existing and future protected areas shall be managed and established in full compliance with the rights of indigenous peoples, mobile peoples and local communities
- Protected areas shall have representatives chosen by indigenous peoples and local communities in their management proportionate to their rights and interests
- Participatory mechanisms for the restitution of indigenous peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent shall be established and implemented by 2010.

42. Regretfully, these three Durban Action Plan targets are still far from being achieved. However, a number of steps have been taken by the IUCN community towards their achievement and new resolutions have been adopted by the World Conservation Congress, including the endorsement of the United Nations Declaration on the Rights of Indigenous People in resolution 4.052 (2008), calling upon all IUCN members to apply it in their respective activities. At the World Parks Congress held in Sydney, Australia, in 2014, IUCN members reiterated in the "Promise of Sydney Vision" their commitment to working in partnership with indigenous peoples, recognizing their long traditions and knowledge and collective rights to land, water, natural resource and culture.

43. Considerable critique has nevertheless been raised that effective implementation of the new paradigm has been lagging and that new policies have been slow in transferring from paper to practice.[35] Leading conservation organizations have recognized their lack of progress. In 2009, IUCN and seven other international conservation NGOs launched the Conservation Initiative on Human Rights, with the aim of improving conservation policy and practice by promoting respect for human rights.[36] The conservation organizations that are members of the Initiative have all committed to four basic principles to guide integration of human rights in each organization's policies and practices, including a commitment not to contribute to infringements of human rights.[37]

44. In preparing the present report, the Special Rapporteur organized a consultation and invited the Conservation Initiative organizations to share information on their progress in advancing respect for indigenous peoples' rights. The responses showed overall positive developments and a strong awareness of the importance of building partnerships with indigenous peoples based on explicit

[35] Forest Peoples Programme, "Conservation and indigenous peoples: assessing the progress since Durban", 2008; Janis Bristol Alcorn and Antoinette G. Royo, "Conservation's engagement with human rights: traction, slippage or avoidance?", *Policy Matters*, No. 15 (July 2007).

[36] The Conservation Initiative on Human Rights is a consortium consisting of Birdlife International, Conservation International, Fauna and Flora International, International Union for Conservation of Nature, The Nature Conservancy, Wetlands International, Wildlife Conservation Society and World Wildlife Fund.

[37] Conservation Initiative, "Human rights in conservation" (see footnote 33).

recognition of, and respect for, their rights. As stated by Conservation International, "stewards of some of the most biodiverse places on Earth, indigenous peoples play a unique and invaluable role in conserving nature's vital resources and they often draw on their own traditional knowledge to design management practices that are best suited for their lands".[38] The Special Rapporteur also held consultations with indigenous peoples on the theme.

45. IUCN has, through its World Conservation Congress, adopted numerous resolutions affirming indigenous peoples' rights; however, each individual IUCN member organization designs and implements their own internal policies and guidelines. The majority of the large conservation organizations have adopted specific policies on indigenous peoples' rights, and several have developed specific guidelines on how to implement free, prior and informed consent in their projects. The World Wide Fund for Nature (WWF) was the first international conservation organization to adopt principles on indigenous peoples' rights, already in 1996.

46. Most conservation organizations recognize that additional resources are needed for the dissemination of policies and for training of staff at the national level in order to advance the practical application of policies and guidelines on indigenous peoples' rights. Furthermore, monitoring of compliance and progress in advancing indigenous peoples' rights in practice still remains sorely lacking in many conservation organizations. Without such indicators, assessments of progress cannot be properly undertaken and transparency regarding how indigenous peoples' rights are promoted in practice will remain deficient.

47. Among the key challenges reported by conservation organizations in advancing in implementation at the national level are non-conducive political and legal settings in which indigenous peoples are not recognized. However, given the powerful position of conservation organizations vis-à-vis authorities in developing countries with weak rule of law, they should use their leverage better and more affirmatively in order to influence national authorities and advocate for legislative reform, the application of free, prior and informed consent and the restitution of ancestral lands of indigenous peoples. As indigenous rights to customary lands, territories and natural resources have yet to be effectively recognized in numerous countries, conservation organizations can play a key role in supporting indigenous peoples in such endeavours and encourage dialogue with authorities to this end. It is thus a positive development that several conservation organizations indicate that they are undertaking such efforts in numerous countries. The Special Rapporteur, however, urges that such engagement be significantly expanded to support legal and policy shifts in countries which still fail to recognize indigenous peoples' rights.

48. Examples of best practice reported include the mapping exercise facilitated by IUCN in Central America, which identified that the bulk of remaining forests and marine resources are within or bordering indigenous traditional lands. According to IUCN, the initiative provided a clear indication of the value and importance of supporting indigenous rights and tenure to meet conservation goals. WWF Indonesia states that, over the past five years, it has moved from including work with indigenous peoples under conservation targets to making it a specific target in itself, notably through working directly with indigenous peoples to document and integrate their territories in government plans, with a view to building stronger recognition of

[38] Conservation International submission to the Special Rapporteur, 3 May 2016.

indigenous peoples' rights and more effective and equitable governance. WWF Cameroon is advocating with the Government for formalized national free, prior and informed consent requirements and guidelines. Additional examples of positive practices reported are support by transnational corporations for securing collective land rights in Indonesia and the United Republic of Tanzania.

49. Most conservation organizations lack complaints and grievance mechanisms or are in the initial stages of developing such measures. As a positive initiative, Conservation International is currently designing a complaints mechanism, to be effective in 14 countries, in consultation with indigenous communities. In 2011, IUCN established the Whakatane Mechanism to undertake assessments with recommendations, in order to mediate in situations where indigenous peoples have been negatively affected by conservation measures. The first two pilot assessments took place in 2011 and 2012, in Mount Elgon, Kenya and in Ob Luang National Fark, Thailand. Implementation of the mechanism has, however, stalled and requires additional resources and support from IUCN members to become operational.

50. Several conservation organizations, including IUCN, WWF and Conservation International reported that they engage regularly with indigenous international forums or that they support the participation of indigenous representatives at key debates on environment and conservation. Some conservation organizations have established advisory bodies consisting of indigenous peoples and have ensured that indigenous peoples are represented in senior positions within their organization, including on their boards. In a positive development, IUCN is currently revising its membership requirements, in order to enable more indigenous organizations to join and formally engage in discussions on conservation policy and practice.

VII. Key conservation challenges and opportunities

51. The respective Special Rapporteurs on the rights of indigenous peoples have, since the establishment of the mandate in 2001, received numerous allegations of large-scale violations of the rights of indigenous peoples in the context of conservation measures. Among the consequences indigenous peoples have faced following forced displacement from protected areas are marginalization, poverty, loss of livelihoods, food insecurity, extrajudicial killings, and disrupted links with spiritual sites and denial of access to justice and remedy. The successive special rapporteurs have raised serious concerns over the impact that protected areas have had on indigenous peoples in a wide range of countries, including: Argentina, Botswana, Chile, Ecuador, Ethiopia, Honduras, Kenya, Mexico, Namibia, Nepal, the Russian Federation, South Africa and the United States of America.[39]

52. Many of these violations persist in countries where protected areas were declared prior to the introduction of rights-based conservation and where legal reforms in favour of indigenous peoples' rights remain deficient. The lack of collective land rights for indigenous people is a primary obstacle to ensuring that

[39] See A/HRC/21/47/Add.2 (Argentina); E/CN.4/2002/97/Add.1 (Botswana); A/HRC/32/53 (Chile); A/HRC/4/32/Add.2 (Ecuador); A/HRC/9/9/Add.1 (Ethiopia); A/HRC/33/42/Add.2 (Honduras); A/HRC/4/32/Add.3, A/HRC/15/37/Add.1 and A/HRC/26/21 (Kenya); E/CN.4/2004/80/Add.4 (Mexico); A/HRC/12/34/Add.3, A/HRC/9/9/Add.1 (Nepal); A/HRC/15/37/Add.5 (the Russian Federation); E/CN.4/2006/78/Add.2 (South Africa); A/HRC/15/37/Add.1 (Uganda); A/HRC/21/47/Add.1 (the United States of America).

rights-based conservation becomes effective, as are conflicting legal norms and failure to implement legislation effectively. The declaration of World Heritage status on protected areas adds additional complexities. The management and co-management of protected areas by indigenous peoples has to date only been applied to a limited extent but holds key potential in enhancing conservation in a manner which respects and enhances the rights of indigenous peoples.

A. Forced displacement and the failure to provide recognition of collective rights to lands, territories and natural resources

53. In Kenya, respective special rapporteurs have expressed long-standing concerns regarding the repeated evictions and forced displacement of several indigenous peoples, including the Ogiek and Sengwer from ancestral lands, which have been declared protected areas. The Ogiek have faced repeated evictions from their ancestral forest lands since the creation of the Mount Elgon national park in 1968 and further gazetting of their lands for the Chepkitale game park in 2000. The Sengwer continue to face displacement from the Embout forests, dating back to the 1970s. Forced away from their lands, indigenous peoples are denied their cultural and subsistence practices. Indigenous peoples who seek to return to their lands are regularly arrested and charged of poaching or even killed by armed "eco-guards". While indigenous peoples in Kenya have repeatedly emphasized their desire to engage in conservation, difficulties in settling collective land tenure remain a key obstacle.

54. A 2016 study by the Rainforest Foundation of 34 protected areas in five countries in the Congo Basin (Cameroon, Central African Republic, the Democratic Republic of the Congo, Gabon and the Republic of the Congo) found that indigenous communities have virtually no tenure security over their traditional lands in any of the five countries. The creation of at least 26 of the protected areas resulted in partial or complete relocation or displacement of local indigenous and farming communities present in the area prior to park establishment. In no case was any reparation for the displacements reported. Furthermore, of the 34 protected areas studied, 25 bordered with logging concessions, 19 overlapped with mining concessions and 9 overlapped with oil concessions.[40]

55. Protected areas constitute approximately 20 per cent of the total landmass in Nepal. The National Parks and Wildlife Conservation Act in that country provides no recognition of indigenous peoples' right to consultation or to access their traditional lands and resources. During a country visit in 2009, the Special Rapporteur received reports of mistreatment, arbitrary detention and sexual abuse of indigenous villagers, in particular indigenous women, by Chitwan National Park rangers and military officials (see HRC/12/34/Add.3, para. 37).

B. Inconsistent national legislation or poor application thereof

56. The U'wa indigenous peoples in Colombia request that the National Park of El Cocuy, partly overlapping with the territory over which they hold legal title, be fully incorporated into it and placed under their custodianship. For the U'wa, the

[40] Pyhälä, Orozco and Counsell, "Protected areas in the Congo Basin" (see footnote 6).

area has special spiritual and cultural significance, as the peak of the Cocuy mountain is home to the spirits and gods and cannot be tread upon without permission from U'wa spiritual authorities. The National Park was established in 1977, before the Constitution and national legislation was adopted on indigenous land rights, and the park remains under the jurisdiction of the government environment authorities. The U'wa reject the presence of settlers and tourism on the mountain and have expressed concern over the degradation of the park, claiming that the park authorities are not protecting the park properly. In discussions with government authorities, the U'wa have rejected co-management proposals and demanded to be designated the environmental authority for the protection of the park.

57. In India, Adivasis and tribal peoples have been evicted from tiger reserves for decades, often without any form of reparation. This continues to occur despite the Forest Rights Act of 2006, which only allows displacement from "critical wildlife habitats" if scientifically determined that the habitat is being damaged irreversibly and that co-existence is not possible. The Forest Rights Act stipulates that even then, displacement can only be carried out after obtaining free, prior and informed consent. In practice, however, displacement from protected areas continues across India through a combination of misinterpretation, coercion, and inducement. Reportedly, tribal peoples have faced prosecution for "offences" in protected areas, such as the traditional practice of collecting honey.[41]

58. Many States are still encumbered with legal, regulatory, and institutional frameworks developed for a strict wilderness conservation model. Commonly, agencies for protected areas and cultural heritage were institutionally separated from other government bodies to protect them from corruption and commercial interests. Independent or semi-independent agencies were given sovereign responsibility for decisions within protected areas in contradiction to other constitutional and legal provisions protecting the rights of indigenous peoples, resulting in overlapping jurisdictions.

59. An analysis undertaken by the NGO Rights and Resources Initiative in 2015 of 21 countries where conflicts affect indigenous peoples in protected areas concluded that inadequate, inconsistent and poorly implemented legislation is a key obstacle to advancing rights-based conservation. The same report noted that legal reforms undertaken since the 2003 World Parks Congress provide a measure of the response of countries to the "new paradigm" articulated in the Durban Accord. Their review of new legislation adopted between 2003 and 2014 showed that these years have largely represented a missed opportunity. Only 8 of the 21 countries enacted or reformed their protected area legislation related to community land and resource rights during this time period. Where such reforms occurred, they mostly focused on enabling co-management or making provisions for communities who already owned land to include their lands in national protected-area systems.[42]

[41] Harry Jonas, Dilys Roe and Jael E. Makagon, *Human Rights Standards for Conservation: An Analysis of Responsibilities, Rights and Redress for Just Conservation* (London, International Institute for Environment and Development, 2014).

[42] Springer and Almeida, "Protected areas and land rights" (see footnote 2).

C. World Heritage sites and tourism

60. Protected areas overlap with World Heritage sites in multiple instances. As raised by the previous Special Rapporteur (see A/67/301, paras. 33-42), the impact on indigenous peoples of the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage sites is a recurring concern, notably because, on numerous occasions, these sites have been declared without consultation with indigenous peoples and have a serious negative impact upon their rights. Protected areas with heritage status have in several instances resulted in forced removal of indigenous peoples or significant restrictions on their access to livelihood resources and sacred sites.[43] Furthermore, heritage listings often lead to an unprecedented increase in tourism. Yet, the Operational Guidelines for Implementation of the World Heritage Convention, which set out the procedure for the inscription of properties on the World Heritage list and the protection and conservation of sites, do not require participation by indigenous peoples. All three of the United Nations mechanisms dedicated specifically to promoting the rights of indigenous peoples, namely, the United Nations Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur, have called for reforms on how the Convention is applied, underlining the urgent need to reform the Operational Guidelines through which potential heritage sites are assessed, so that they are aligned with the Declaration on the Rights of Indigenous Peoples and adopt procedures to ensure indigenous peoples' free, prior and informed consent.

61. There are numerous examples of protected areas with heritage status over which concerns have been raised by indigenous peoples. In Kenya, the designation of Lake Bogoria National Reserve as a World Heritage site in 2011 was undertaken without the consent of the indigenous Endorois community, despite the ruling by the African Court on Human and Peoples' Rights in favour of the Endorois indigenous peoples' rights in 2009. The Endorois people have expressed concern that the Government of Kenya may use the World Heritage status as a pretext for denying them restitution, as required by the Court's decision.[44]

62. In Argentina, the Special Rapporteur observed during a country visit in 2011 that after the Quebrada de Humahuaca was listed by UNESCO as a World Heritage site in 2003, there was a huge increase in tourism and in the economic value of the land occupied by indigenous peoples. The provincial government had issued land titles to foreign investors, and as a result, the surrounding indigenous communities were dispossessed of their land and had fewer water resources. The communities were not involved in the management of the site and derived no economic benefits therefrom. The Special Rapporteur recommended increased participation by indigenous peoples in the management of the site (see A/HRC/21/47/Add.2, paras. 50 and 97).

63. In Thailand, the Government requested the listing of the Kaeng Krachen National Park in 2013 as a World Heritage park in 2013 without consulting the local

[43] Stephan Disko and Helen Tugendhat, eds., *World Heritage Sites and Indigenous Peoples' Rights* (Copenhagen, International Work Group for Indigenous Affairs, Forest Peoples Programme, Gundjeihmi Aboriginal Corporation, 2014).

[44] International Work Group for Indigenous Affairs, submission to the Special Rapporteur, May 2016.

indigenous Karen peoples. The Karen have experienced forced evictions, destruction of housing and crops, arrests and enforced disappearances. On 17 April 2014, a Karen human rights defender disappeared after attending a meeting on a lawsuit against park officials for destruction of Karen housing in 2010/2011. Park officials acknowledged having detained him earlier that day for illegal possession of wild honey, but claimed to have released him subsequently. His whereabouts have been unknown since. The Karen have expressed concerns over the potential listing of the park as a World Heritage site, fearing that it would result in further evictions, prohibitions on the gathering of wild honey and herbs and an increase of tourism, which would affect the environment negatively, creating problems, notably with waste management. The Office of the United Nations High Commissioner for Human Rights has advised the World Heritage Committee to ensure that comprehensive consultations are held by the Thai Government with Karen communities, to ensure respect for their rights, to refrain from evictions and to ensure that the communities can participate in the management of the park if it is designated a World Heritage park.[45]

64. If the designation of World Heritage sites is done constructively and with the consent of the indigenous peoples affected, such status could provide an effective contribution to conservation and the protection of indigenous rights. In 2011, the World Heritage Committee incorporated the uranium-rich Koongarra area into the Kakadu National Park World Heritage site, at the joint request of the Government of Australia and the indigenous landowners, the Djok clan, which in effect barred future mineral development in the area.[46]

D. Indigenous management of protected areas

65. Over the past decade, increasing evidence supports the correlation between secure indigenous tenure and positive conservation outcomes, at times better than those achieved in State-managed protected areas. The effectiveness of indigenous-owned lands in resisting deforestation in Brazil is well known. In Namibia, community-based wildlife management has resulted in significant growth in wildlife populations, especially in areas that had formerly been subject to heavy poaching. In Australia and the United States of America, indigenous peoples effectively manage or co-manage protected areas, through dynamic and sustainable partnerships which seek to redress past exclusion policies. In the Philippines, the national Indigenous Peoples' Rights Act includes a provision that protected areas within or overlapping ancestral domains will remain protected but that indigenous communities have primary responsibility for maintaining and protecting such areas. The law governing protected areas in the Philippines, the National Integrated Protected Areas Act, calls for indigenous peoples' participation in protected-area management boards. However, certain obstacles remain. For example, indigenous participation in management boards is impeded by a lack of training and orientation for indigenous peoples on their roles and responsibilities and such meetings tend to be conducted using overly technical language.[47]

[45] Office of the United Nations High Commissioner for Human Rights submissions to the UNESCO World Heritage Committee, 26 November 2014.

[46] International Work Group for Indigenous Affairs submission to the Special Rapporteur, May 2016.

[47] Springer and Almeida, "Protected areas and land rights" (see footnote 2).

66. The management capacity of indigenous peoples is recognized as part of the new conservation paradigm. IUCN has committed to advocating for the recognition of "indigenous peoples and local community conserved territories and areas" in conservation policy as a new governance category. Yet, over the past decade only limited progress has been made towards their recognition and such governance still only exist in less than 5 per cent of all protected areas. Significant expansion of areas under indigenous management, coupled with solid partnerships with indigenous peoples for knowledge exchange, remain key opportunities for States and conservationists to operationalize the participation of indigenous peoples in conservation.

67. As the creation of protected areas and emerging conservation activities is further advanced by climate change initiatives, notably reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries, the active participation of indigenous peoples in these processes is essential to their sustainable success. The Special Rapporteur will continue to monitor these ongoing developments.

VIII. Conclusions

68. While the high rate of biodiversity in indigenous ancestral lands is well established, the contribution of indigenous peoples to conservation has yet to be fully acknowledged. Although a new rights-based paradigm to conservation has been advancing during the last decades, it remains in its initial stages of being applied. Rights-based conservation measures continue to be hampered by the legacy of past violations and by the lack of legal recognition by States of indigenous peoples' rights. Conservation organizations and indigenous organizations could be powerful allies in their mutually shared goals to safeguard biodiversity and protect nature from external threats such as unsustainable resource exploitation. Protected areas continue to expand, yet threats against them from extractive industry, energy and infrastructure projects are also increasing, and thus the urgency to address effective, collaborative and long-term conservation is of paramount importance. The escalating incidence of killings of indigenous environmentalists highlights the importance of conservationists and indigenous peoples joining forces.[48] Insecure collective land tenure continues to undermine the ability of indigenous peoples to effectively protect their traditional lands, territories and natural resources. Conservation organizations should make much more use of their leverage vis-a-vis States to advocate for the legal recognition of indigenous peoples' rights at the national level.

69. Full recognition of indigenous land rights and participation are key enabling conditions for conservation to be sustained. The Durban Action Plan which states that all existing and future protected areas shall be managed and established in full compliance with the rights of indigenous peoples and the Sydney Vision which promised that there should be redress and remedy for past and continuing injustices in accord with international agreements are

[48] Global Witness, *2015's Deadly Environment: the Killing and Criminalization of Land and Environmental Defenders Worldwide*, June 2016.

powerful commitments of the conservation community. The Special Rapporteur believes that the effective implementation of these commitments can operationalize the human rights-based conservation paradigm.

IX. Recommendations

To States:

70. Undertake all necessary measures for the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples and ratify the ILO Indigenous and Tribal Peoples Convention No. 169.

71. Adopt all necessary policy, legal and administrative measures for the full recognition of the rights of indigenous peoples over their lands, territories and resources as enshrined in international human rights law.

72. Review and harmonize the environmental, legal and institutional framework with their obligations regarding the rights of indigenous peoples and ensure that a rights-based approach is applied to the creation or expansion of existing protected areas.

73. Comply with the duty to consult and obtain the free, prior and informed consent of indigenous peoples before the development of conservation initiatives which may affect their rights.

74. Support partnerships between government authorities and indigenous peoples to encourage intercultural engagement in order to build trust and collaboration to favour of shared goals of sustainable conservation.

75. Comply with judgments and decisions of international and regional human rights monitoring mechanisms regarding indigenous peoples' rights.

76. Establish accountability and reparation mechanisms for infringements on indigenous rights in the context of conservation and provide redress for historical and contemporary wrongs.

To conservation organizations:

77. Respect and support the rights of indigenous peoples as recognized in international human rights law and enhance their ability to engage in conservation by advocating for recognition of their collective rights.

78. Shift the new paradigm from paper to practice; adopt human rights-based policies, including on the rights of indigenous peoples, and ensure effective dissemination of these and trainings for conservation staff, especially for those involved in implementation at the national and local level.

79. As part of due diligence, improve monitoring and include compliance with indigenous peoples' rights in regular project assessments. Ensure that information obtained through monitoring and reporting is transparent and accessible.

80. Develop mechanisms for solid partnerships for regular and continuous engagement with indigenous peoples, including ensuring their full and effective participation in designing, implementing and monitoring conservation initiatives.

81. Support indigenous peoples to develop and sustain their own conservation initiatives and exchange conservation management experiences with them. This will allow learning from indigenous traditional conservation measures and transfer of technical skills to engage indigenous peoples in protected areas management.

82. Ensure that culturally appropriate complaints mechanisms are available for indigenous peoples to voice their concerns over conservation initiatives and support initiatives for indigenous peoples' right to remedy in cases when conservation activities have negatively impacted their rights.

To donors:

83. Require that conservation organizations adopt human rights policies and monitor the application of human rights-based conservation programmes, notably in relation to indigenous peoples' rights.

84. Provide direct funding to better support indigenous peoples' own initiatives for conservation.

To UNESCO:

85. Reform the Operational Guidelines through which the World Heritage Convention is implemented to align them with the United Nations Declaration on the Rights of Indigenous Peoples and adopt procedures to ensure indigenous peoples' free, prior and informed consent.

To human rights monitoring mechanisms and relevant United Nations bodies and agencies:

86. Devote further attention to monitoring the impact conservation measures have on indigenous peoples, in order to promote a rights-based approach to protected areas management by government authorities and conservation organizations.